

CHAPTER 28 TUCSON PROCUREMENT CODE

It is the purpose of The Tucson Procurement Code to:

- Simplify, clarify, centralize, and modernize the law governing procurement by the City; and
- Permit the continued development of procurement policies and practices; and
- Provide for increased public confidence in the procedures followed in public Procurement; and
- Ensure the fair and equitable treatment of all persons who deal with the procurement system of the City; and
- Provide increased economy in City procurement activities and maximize to the fullest extent practicable the purchasing value of public monies of the City; and
- Foster effective broad-based competition within the free enterprise system; and
- Provide safeguards for the maintenance of a procurement system of quality and integrity; and
- Obtain in a cost-effective and timely manner the materials, services and construction required by the City to better serve its citizens.

ARTICLE I. GENERAL PROVISIONS

Sec. 28-1. Applicability.

Sec. 28-1(1) The provisions of this chapter shall apply to the following:

- (a) every expenditure of public monies by this City irrespective of their source, including federal assistance monies;
- (b) disposal of property; and
- (c) contracts where there is no expenditure of public monies or where the City is offering something of value to the business community when the City determines source selection and award of a contract.

Sec. 28-1(2) The following are exempt from the provisions of this chapter:

- (a) grants awarded by the City and approved by Mayor and Council;
- (b) the sale or lease of City real property;
- (c) contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which this City is or may become a party or to contracts for special investigative services for law enforcement purposes;
- (d) agreements negotiated by the City Attorney in settlement of litigation or threatened litigation;
- (e) the purchases of materials for resale in a concession operation which shall be made in accordance with procedures prescribed by the Director; or
- (f) contracts for municipal improvement districts.

Sec. 28-2. Definitions.

In this chapter, unless the context otherwise requires:

Sec. 28-2(1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 28-2(2) "Change order" means a written document authorized by the Director which directs the contractor to make changes with or without the consent of the contractor.

Sec. 28-2(3) "City" means the municipal corporation now existing and known as the City of Tucson.

Sec. 28-2(4) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings or real property.

Sec. 28-2(5) "Construction services" means either of the following for construction-manager-at risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in Sec. 28-47.

Sec. 28-2(6) "Contract" means all types of City agreements, regardless of what they may be called, for the procurement of materials, services, or construction or the disposal of materials.

Sec. 28-2(7) "Contract amendment" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Sec. 28-2(8) "Contract Officer" means any person duly authorized by the Director to facilitate the source selection process, including but not limited to, preparing solicitations and written determinations, conducting negotiations, making award recommendations, and administering contracts.

Sec. 28-2(9) "Contractor" means any person who has a contract with the City.

Sec. 28-2(10) "Days", unless otherwise specified, means calendar days and shall be computed pursuant to A.R.S. §1-243.

Sec. 28-2(11) "Department" means the Department of Procurement.

Sec. 28-2(12) "Designee" means a duly authorized representative of the Director, designated by the Director.

Sec. 28-2(13) "Director" means the Director of the Department of Procurement and the central procurement and contracting authority for the City.

Sec. 28-2(14) "Disposal of material" means sale of surplus, unclaimed and seized property by public auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this chapter.

Sec. 28-2(15) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Sec. 28-2(16) "Grant" means the furnishing by this City of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 28-2(17) "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 28-2(18) "Person" means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 28-2(19) "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the acquisition of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation, negotiation and award of contract, and all phases of contract administration.

Sec. 28-2(20) "Public Notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 28-2(21) "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or subconsultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.

Sec. 28-2(22) "Subcontractor or subconsultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the City.

Sec. 28-2(23) "Written or In Writing" means the product of any method for forming characters on paper, or other materials, or viewable screens, which can be read,

retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 28-2(24) "Using agency" means any organizational unit of the City, which utilizes any materials, services or construction procured under this chapter.

Sec. 28-3. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

Sec. 28-4. Requirement of Good Faith.

This Chapter requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

Sec. 28-5 Confidential Information.

Confidential information shall be designated as follows:

Sec. 28-5(1) If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears.

Sec. 28-5(2) The information identified by the person as confidential may not be disclosed until the Director makes a written determination.

Sec. 28-5(3) The Director shall review the statement and information and may determine in writing that the information shall be withheld or disclosed.

Sec. 28-5(4) If the Director determines to disclose the information, the Director shall inform the person in writing of such determination.

Secs. 28-6 through 28-10. Reserved.

ARTICLE II. PROCUREMENT DIRECTOR AUTHORITY

Sec. 28-11. Authority of the Director.

Sec. 28-11(1) Except as otherwise provided in this chapter, the Director may adopt operational procedures, consistent with this chapter, governing the procurement

and management of all materials, services and construction to be procured by this City and the disposal of materials.

Sec. 28-11(2) The Director shall serve as the central procurement and contracting authority of this City.

Sec. 28-11(3) Except as otherwise provided in this chapter, the Director shall:

- (a) Procure or supervise the procurement of all materials, services and construction needed by this City.
- (b) Establish guidelines for the management of all inventories of materials belonging to this City.
- (c) Sell, trade or otherwise dispose of surplus materials belonging to this City.
- (d) Prepare, issue, revise, maintain, and monitor the use of specifications for materials, services and construction required by this City.
- (e) Manage the City's procurement card (pCard) program.
- (f) Manage the City's Reprographics Division.
- (g) Manage the City's Mail Services Division.

Sec. 28-11(4) The Director may delegate procurement authority to designees or to any department or official of the City.

Sec. 28-11(5) The Director may determine in writing that noncompliance with any provision of this Chapter is nonsubstantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

Sec. 28-12. Written Determinations.

Written determinations required by this Chapter shall be retained in the Department.

Secs. 28-13 and 28-14. Reserved.

ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 28-15. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-15(1) "Best Value" means a technique in the competitive sealed bid process which permits the evaluation of objective criteria to determine the best overall value to the City.

Sec. 28-15(2) "Discussions" means communication with an offeror, bidder or respondent for the purpose of:

- (a) eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
- (b) clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
- (c) resolving minor variations in contract terms and conditions; or
- (d) establishing the competency or financial stability of any offeror, bidder or respondent.

Sec. 28-15(3) "Invitation for bid" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in Section 28-17.

Sec. 28-15(4) "Invitation for reverse auction bids" means all documentation, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with procedures prescribed in Section 28-24.

Sec. 28-15(5) "Minor informality" means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders, offerors or respondents.

Sec. 28-15(6) "Negotiations" means an exchange of information or any form of cooperation during which the offeror and the City may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract.

Sec. 28-15(7) "Proposal revision" means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contract officer, as the result of negotiation.

Sec. 28-15(8) "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Section 28-18.

Sec. 28-15(9) "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with Article V.

Sec. 28-15(10) "Responsible bidder, offeror, or respondent" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Sec. 28-15(11) "Responsive bidder " means a person who submits a bid which conforms in all material respects to the invitation for bids.

Sec, 28-15 (12) "Reverse auction" means an electronic auction in which the role of the buyer and seller are reversed. In an ordinary auction (also known as a forward auction), buyers compete to obtain a good or service. In a reverse auction, sellers compete to obtain business. Bids shall be publicly posted throughout the auction to encourage competition.

Sec. 28-15(13) "Solicitation" means an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, an invitation for reverse auction bids or any other invitation or request by which the City invites a person to participate in a procurement.

Sec. 28-16. Methods of Source Selection.

All contracts of the City shall be awarded by one of the methods of source selection specified in this Chapter.

Sec. 28-17 Competitive Sealed Bidding.

Sec. 28-17(1) Invitation for Bids.

- (a) Competitive sealed bids shall be solicited through an invitation for bids. The invitation for bids shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of an invitation for bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the Contract Officer shall only consider bids that are submitted from prequalified bidders.

Sec. 28-17(2) Public Notice. Notice of the invitation for bids shall be electronically posted and the invitation for bids shall be available for public inspection not less than fourteen days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Director. The public notice shall state the place, date, and time of bid opening.

Sec. 28-17(3) Late Bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The Department's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 28-17(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder and the amount of each bid, as well as other relevant information as the Director deems appropriate shall be recorded. Unless otherwise determined by the Director, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the Department and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the Director, the bids shall not be opened for public inspection until after a contract is awarded. After a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5.

Sec. 28-17(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 28-17(6) Correction or Withdrawal of Bids; Cancellation of Awards.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Director.

Sec. 28-17(7) Contract Award.

- (a) General. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (b) Contract Award Based on Best Value. Notwithstanding Sec. 28-17(7)(a), the contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids in accordance with Sec. 28-17(1). The contract shall be awarded by appropriate written notice to the responsive, responsible bidder whose bid is determined to be the best value to the City and that conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (c) Procurement of Recycled Material. If the price of recycled material, which conforms to specifications, is within ten percent of a low bid material, which is not recycled, and the recycled material bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled material. The Director is authorized to purchase recycled material where the price differential between available virgin material and recycled content material is greater than ten percent when the additional cost, as determined by the Director, is deemed insignificant and substantial budget impacts will not result.
- (d) Consideration of Taxes in Competitive Sealed Bidding. In evaluating the bids, except for procurement of construction, and for purposes of determining the low bidder, the Director shall include the amount of applicable business privilege tax. The amount of a city's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a Tucson bidder and an Arizona-based, non-Tucson bidder. In this event, the applicable city business privilege tax shall be included in the non-Tucson bidder's price

price for evaluation purposes only to determine the lowest bidder.

- (e) Exceeding Available Funds. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent, the Director is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (f) Public Record. After the City issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5 (Confidential Information).

Sec. 28-17(8) Low Tie Bids. If there are two or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Director.

Sec. 28-18. Competitive Sealed Proposals.

Sec. 28-18(1) Request for Proposals.

- (a) Competitive sealed proposals shall be solicited through a request for proposals. The request for proposals shall include a scope of work and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of a request for proposals in order to establish a list of qualified offerors. In the event a prequalification process is used, the Contract Officer shall only consider proposals that are submitted from prequalified offerors.

Sec. 28-18(2) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 28-17(2) (Competitive Sealed Bidding, Public Notice).

Sec. 28-18(3) Late Proposals. A proposal is late if it is received at the location designated in the Request for Proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Sec. 28-17(3).

Sec. 28-18(4) Receipt of Proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5 (Confidential Information).

Sec. 28-18(5) Evaluation of Proposals.

- (a) Evaluation Criteria. The request for proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required.
- (b) Selection Committee. The Director shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 28-18(6) Discussion with Offerors. Discussions may be conducted with offerors.

Sec. 28-18(7) Negotiations with Offerors and Revisions to Proposals. Negotiations may be conducted with offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (a) Concurrent Negotiations. Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- (b) Exclusive Negotiations. Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the City. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive

offeror. If exclusive negotiations are conducted and an agreement is not reached, the City may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 28-18(8) Contract Award. Contract award shall be made by the Director to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Sec. 28-19. Contracting for Legal Counsel.

Sec. 28-19(1) Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, contracts for the services of legal counsel shall be awarded with the authorization of the City Attorney except as otherwise provided by law.

Sec. 28-19(2) Conditions for Use. Unless determined by the City Attorney that direct selection is in the best interest of the City, the services of legal counsel shall be procured in accordance with this Chapter.

Sec. 28-20. Small Purchases.

Sec. 28-20(1) General. Any contract not exceeding \$50,000 may be made by the Director in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

Sec. 28-20(2) Small Purchases Over \$5,000. Insofar as it is practical for small purchases in excess of \$5,000 but less than \$50,000, no less than three businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation, which is most advantageous to the City and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be maintained as a public record.

Sec. 28-20(3) Small Purchases Under \$5,000. The Director shall adopt operational procedures for making small purchases of \$5,000 or less.

Sec. 28-21. Sole Source Procurement.

Notwithstanding any other provisions of this Chapter, a contract may be awarded without competition when the Director determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency

requesting a sole source procurement shall provide written evidence to support a sole source determination. The Director may require that negotiations are conducted as to price, delivery, and terms. The Director may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

Sec. 28-22. Emergency Procurements.

Notwithstanding any other provisions of this Chapter, the Director may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with Sections 28-17 (Competitive Sealed Bidding), 28-18 (Competitive Sealed Proposals), 28-24 (Competitive Reverse Auctions), 28-49 (Procurement of Professional Design Services), or 28-50 (Procurement of Construction Services) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The using agency requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be maintained as a public record.

Sec. 28-23. Special Procurements.

Notwithstanding any other provisions of this Chapter, the Director may make or authorize others to make procurements above the small purchase amount specified in Section 28-20 when, due to unusual or special circumstances, it would be in the best interest of the City to accomplish the procurement without compliance with Sections 28-17 (Competitive Sealed Bidding), 28-18 (Competitive Sealed Proposals), 28-24 (Competitive Reverse Auctions), 28-49 (Procurement of Professional Design Services), or 28-50 (Procurement of Construction Services). The using agency requesting a special procurement shall provide written evidence to support a special procurement determination. Any special procurement under this Section shall be limited to those materials, services, or construction necessary to satisfy the City's need and shall be made with sound fiscal discretion. A written determination by the Director of the basis for the special procurement and for the selection of the particular contractor shall be maintained as public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, a wise exercise of discretion and is in the public interest.

Sec. 28-24. Competitive Reverse Auctions

Sec. 28-24(1) Invitation for Reverse Auction Bids.

- (a) Competitive reverse auction bids shall be solicited through an invitation for reverse auction bids. The invitation for reverse auction bids shall be issued and shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of an invitation for reverse auction bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the Contract Officer shall only consider bids that are submitted from prequalified bidders.

Sec. 28-24(2) Public Notice. Notice of the invitation for reverse auction bids shall be electronically posted and the invitation for reverse auction bids shall be available for public inspection not less than fourteen days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Director. The public notice shall state the location of the internet website hosting the reverse auction.

Sec. 28-24(3) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for reverse auction bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for reverse auction bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for reverse auction bids.

Sec. 28-24(4) Correction or Withdrawal of Bids; Cancellation of Awards.

Correction or withdrawal of inadvertently erroneous bids before or after auction closing, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before auction closing may be modified or withdrawn by written notice received in the department prior to the time set for auction closing.

Mistakes discovered after auction closing may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After auction closing, no changes in bid prices or other bid provisions prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident in the auction transcripts, but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Director.

Sec. 28-24(5) Contract Award. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

Sec. 28-25. Cancellation of Solicitations.

Sec. 28-25(1) Cancellation of Solicitations. An invitation for bids, a request for proposals, a request for qualifications, an invitation for reverse auction bids or other solicitation may be cancelled, or any or all bids, proposals or statements of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the City.

Sec. 28-25(2) Prior to Opening.

- (a) As used in this Section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals or in the case of a reverse auction means the date and time set for the auction close.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Director determines in writing that such action is in the City's best interest for reasons including but not limited to:
 - (i) the City no longer requires the materials, services, or construction;
 - (ii) the City no longer can reasonably expect to fund the procurement; or
 - (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the City.
- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.

- (d) The notice of cancellation shall:
 - (i) identify the solicitation;
 - (ii) briefly explain the reason for cancellation; and
 - (iii) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

Sec. 28-25(3) After Opening.

- (a) After opening but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the Director determines in writing that such action is in the City's best interest for reasons including but not limited to:
 - (i) the City no longer requires the materials, services or construction;
 - (ii) ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;
 - (iii) the solicitation did not provide for consideration of all factors of significance to the City;
 - (iv) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - (v) all otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;
 - (vi) there is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - (vii) competition was insufficient.
- (b) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to Subsection 28-25(2)(d) of this

Section.

- (c) If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 28-25(4) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 28-26. Rejection of Individual Bids, Proposals, Quotations or Statements of Qualifications.

- (a) A bid may be rejected if:
 - (i) the bidder is determined to be nonresponsible pursuant to Section 28-27 (Responsibility of Bidders and Offerors);
 - (ii) the bid is nonresponsive in accordance with Section 28-17 (Competitive Sealed Bidding); or
 - (iii) it is otherwise not advantageous to the City.
- (b) A proposal, statement of qualifications, reverse auction bid or quotation may be rejected if:
 - (i) the person responding to the solicitation is determined to be nonresponsible pursuant to Section 28-27 (Responsibility of Bidders, Offerors and Respondents); or
 - (ii) it is unacceptable;
 - (iii) the proposed price exceeds available funds or is unreasonable; or
 - (iv) it is otherwise not advantageous to the City.
- (c) The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 28-27. Responsibility of Bidders, Offerors and Respondents.

Sec. 28-27(1) Findings of Nonresponsibility. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Contract Officer. The unreasonable failure of a bidder, offeror or

respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

Sec. 28-27(2) Right of Nondisclosure. Confidential information furnished by a bidder, offeror or respondent pursuant to this Section shall not be disclosed by the City outside of the department, or using agency, without prior written consent by the bidder, offeror or respondent.

Sec. 28-27(3) Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the City; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 28-27(4) The Contract Officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Sec. 28-28. Bid and Contract Security, Material or Service Contracts.

The Director may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Director shall consider the nature of the performance and the need for future protection to the City. The requirement for security must be included in the invitation for bids, invitation for reverse auction bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

Sec. 28-29. Types of Contracts.

Subject to the limitations of this chapter, any type of contract which will promote the best interests of this City may be used.

Sec. 28-30. Approval of Accounting System.

The Director may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

Sec. 28-31. Multi-year Contracts.

Unless otherwise provided by law, a contract for materials, services or construction may be entered into for any period of time deemed to be in the best interest of this City, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

Sec. 28-32. Right to Inspect.

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this City.

Sec. 28-33. Right to Audit Records.

Sec. 28-33(1) The City may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in Article VII of this Chapter to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless otherwise specified in the contract.

Sec. 28-33(2) The City is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three years from the date of final payment under the subcontract, unless otherwise specified in the contract.

Sec. 28-34. Reporting of Anticompetitive Practices.

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents a notice of the relevant facts shall be transmitted to the Director and the City Attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Director.

Sec. 28-35. Prospective Vendors Lists

Sec. 28-35(1) The Director shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a city contract.

Sec. 28-35(2) Persons desiring to be included on the prospective vendors list may notify the Director or may register with the department electronically. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the City.

Sec. 28-35(3) It shall be the vendor’s sole responsibility to ensure that vendor registration information is current and active.

Sec. 28-36. Contract Form and Execution.

All contracts entered into under this chapter shall be executed in the name of the City by the Director and approved as to form by the City Attorney. Such contracts are not required to be countersigned by the City Clerk.

Sec. 28-37. Assignment of Rights and Duties.

The rights and duties of a City contract are not transferable or otherwise assignable without the written consent of the Director.

Sec. 28-38. Efficient Resource Procurement and Utilization.

All printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper, and duplexed.

Secs. 28-39 through 28-40. Reserved

ARTICLE IV. SPECIFICATIONS

Sec. 28-41. Definition.

As used in this Article, "specification" is used interchangeably with “scope”, “scope of services”, or “scope of work” and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Sec. 28-42. Maximum Practicable Competition.

Sec. 28-42(1) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive.

Sec. 28-42(2) To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 28-42(3) Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using agency requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of restrictive specifications.

Sec. 28-42(4) To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials.

Sec. 28-43. Specifications Prepared by Other Than City Personnel.

The requirements of this Chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by City personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Sec. 28-44. Brand Name or Equal Specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from an manufacturer.

Sec. 28-45. Brand Name Specification.

A brand name specification may be used to identify the sole acceptable item that meets the City's needs. The using agency requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the Director of the basis for the brand name shall be maintained as public record. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.

Sec. 28-46. Reserved

ARTICLE V. PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CAPITAL IMPROVEMENTS

Sec. 28-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-47 (1) "Capital Improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 28-47(2) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing public infrastructures or facilities, including structures, buildings or real property.

Sec. 28-47(3) "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(4) "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are

authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

Sec. 28-47(5) "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 28-47(6) "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 28-47(7) "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(8) "Finance services" means financing for a construction services project.

Sec. 28-47(9) "Force Account" means construction work performed by the City's regularly employed personnel.

Sec. 28-47(10) "Infrastructure Facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

Sec. 28-47(11) "Job-order-contracting" means a project delivery method in which:

- (a) The contract is a requirements contract for indefinite quantities of construction.
- (b) The construction to be performed is specified in job orders issued during the contract.
- (c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- (d) The project limit shall be set by the Director in accordance with A.R.S. Title 34.

Sec. 28-47(12) "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Sec. 28-47(13) "Operations services" means routine operation of existing facilities, structures, buildings or real property.

Sec. 28-47(14) "Preconstruction services" means advice during the design phase.

Sec. 28-47(15) "Professional Design Services" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona.

Sec. 28-48 Procurement of Construction.

28-48(1) Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in 28-50 (Procurement of Construction Services), 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-22 (Emergency Procurements) and 28-23 (Special Procurements). The Director shall award and administer contracts for construction in accordance with the requirements of A.R.S. Title 34 and the Tucson Procurement Code.

28-48(2) Bidders shall submit subcontractor lists for all first tier subcontracts that are above \$5,000. Bids not in compliance with this requirement shall be deemed non-responsive. Submission of the subcontractor list shall act as bidder certification that the work shall be performed by either the bidder or the listed subcontractors. Substitutions may be allowed at the discretion of the Director, for

reasons including but not limited to, subcontractor non-responsiveness, insolvency, or any other reason deemed by the Director to be in the best interest of the City.

Sec. 28-49 Procurement of Professional Design Services.

Contracts for professional design services shall be solicited through a request for qualifications except as otherwise provided for in 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-22 (Emergency Procurements) and 28-23 (Special Procurements). The Director shall award and administer contracts for professional design services in accordance with the requirements of A.R.S. Title 34 and the Tucson Procurement Code.

Sec. 28-50 Procurement of Construction Services.

Contracts for construction services shall be solicited through a design-build, construction-manager-at-risk or job-order-contracting selection process utilizing a request for qualifications except as otherwise provided for in 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-22 (Emergency Procurements) and 28-23 (Special Procurements). The Director shall award and administer contracts for construction services in accordance with the requirements of A.R.S. Title 34 and the Tucson Procurement Code.

Sec. 28-51. Construction by City Employees.

A building, structure, addition or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with A.R.S. Title 34.

Sec. 28-52 through 28-57. Reserved.

ARTICLE VI. CONTRACT TERMS AND CONDITIONS

Sec. 28-58. Contract Terms and Conditions.

All City contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Director shall have the authority to establish and modify any such terms and conditions.

Secs. 28-59 through 28-61. Reserved.

ARTICLE VII. COST PRINCIPLES

Sec. 28-62. Cost Principles.

The Director shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

Sec. 28-63. Cost or Pricing Data.

The submission of current cost or pricing data may be required in connection with any award , change order or contract modification.

Secs. 28-64 and 28-65. Reserved.

ARTICLE VIII. MATERIALS MANAGEMENT

Sec. 28-66. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-66(1) "Property" means assets with a useful life of more than one year.

Sec. 28-66(2) "Property transfer" means the transfer of fixed assets between using agencies or transfer of property to or from the Surplus Property Program.

Sec. 28-66(3) "Surplus property" means property no longer needed by using agencies for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

Sec. 28-66(4) "Unclaimed, lost and confiscated property" means all property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any City Officer or employee as lost or unclaimed.

Sec. 28-67. Materials Management Guidelines.

The Director shall establish guidelines as may be required governing:

Sec. 28-67(1) The transfer of surplus property and operation of the surplus property program.

Sec. 28-67(2) The sale or disposal of surplus, unclaimed and seized property by competitive sale or other authorized method.

Sec. 28-67(3) The trade-in of surplus property for purchase of new equipment.

Sec. 28-68. Inventory Management.

The Director shall control and supervise all existing and future City warehouses established for the purpose of purchasing, storing and issuing supplies. The purchase of inventory will be funded through a stores revolving fund of sufficient amount to finance inventory purchases. Such funds shall be under the control of the Director, who shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof. The Director will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.

Sec. 28-69. Disposition of Surplus Property.

Sec. 28-69(1) The Director will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by using agencies.

Sec. 28-69(2) Using agencies shall request Department authorization to transfer fixed assets to another using agency, or to request transfer of property into or from the Surplus Property Program.

Sec. 28-69(3) Unless otherwise provided for, surplus property no longer needed by any using agency shall be offered through competitive sale to the highest responsible bidder.

Sec. 28-69(4) Unless otherwise provided, all proceeds from the sale of surplus property will be deposited into the City's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

Sec. 28-69(5) Notwithstanding the provisions of this Article, surplus fire apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue or medical agencies. Responsibility for the sale may be delegated by the Director to the Tucson Fire Chief. Any such sale shall be at fair market value and the proceeds shall be restricted for use by the Tucson Fire Department for the purchase of equipment or apparatus in accordance with Article III.

Sec. 28-70. Disposition of Unclaimed, Lost, Confiscated Property.

Sec. 28-70(1) The Tucson Police Department will deliver to the Department all unclaimed, lost and confiscated property not claimed or taken away by owner or finder, excluding all firearms, ammunition, knives or other weapons and excluding any items determined to be of use in special police operations.

Sec. 28-70(2) After delivery to the Department, unclaimed or lost property may be transferred to using agencies upon submission of a detailed request from the using agency to the Director.

Sec. 28-70(3) Unless otherwise provided for, all remaining unclaimed, lost and confiscated property shall be disposed of in accordance with 28-69(3). Proceeds of the auction, less selling expenses if applicable, will be deposited to the general fund unless otherwise required.

Secs. 28-71 Donations

Notwithstanding any other provision, surplus, unclaimed, or lost property not needed by using agencies may be disposed of through a donation process provided that any such noncompetitive disposition is made pursuant to a request submitted to the Director for review and approval of the City Attorney. The Director shall consider the monetary loss to the City and determine whether such disposition is in the public interest. Any request for donation with a fair market value exceeding \$2,500 shall require additional approval by the Mayor and Council.

Sec. 28-71(2). Notwithstanding the provisions of 28-71(1), surplus fire apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue or medical agencies.

Sec. 28-71(3). Notwithstanding the provisions of 28-69(3) and 28-69(4), the fire chief and/or his designee may dispose of surplus fire apparatus and/or related equipment through noncompetitive sale at fair market value with public emergency, fire, rescue or medical agencies, with the proceeds of such a sale restricted for use by the fire department for the purchase of equipment or apparatus in accordance with sections 28-17 or 28-18.

Secs. 28-72 through 28-74. Reserved.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Sec. 28-75. Definitions.

In this Article, unless the context otherwise requires:

Sec. 28-75(1) "Adequate evidence" means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

Sec. 28-75(2) "Affiliate" means any person whose governing instruments requires it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.

Sec. 28-75(3) "Debarment" means an action taken by the Director under this Article to prohibit a person from participating in City procurements.

Sec. 28-75(4) "Filed" means delivery to the Contract Officer or to the Director, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

Sec. 28-75(5) "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Sec. 28-75(6) "Interested party" means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

Sec. 28-75(7) "Receipt" means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons' last known address.

Sec. 28-75(7) "Substantial evidence" means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Sec. 28-75(8) "Suspension" means an action taken by the Director under this Article temporarily disqualifying a person from participating in City procurements.

Sec. 28-76. Authority of the Contract Officer

The Contract Officer shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the Contract Officer may be made to the Director pursuant to the provisions of this Article.

Sec. 28-77 Right to Protest.

Any actual interested party who is aggrieved in connection with the solicitation or award of a contract may protest to the Contract Officer.

Sec. 28-78. Filing of a Protest.

Content of Protest. The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
- (b) The signature of the protestant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 28-79. Time for Filing Protests.

Sec. 28-79(1) Protests Concerning Improprieties in a Solicitation.

Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five working days before the solicitation due date.

Sec. 28-79(2) In cases other than those covered in Subsection (1) of this Section, protests shall be filed within ten days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than ten days after issuance of notification of award.

Sec. 28-79(3) The Contract Officer, without waiving the City's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 28-79(4) The Contract Officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

Sec. 28-80. Stay of Procurements during the Protest.

In the event of a timely protest under Section 28-79, the City may proceed further with the solicitation or with the award of the contract unless the Director makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the City.

Sec. 28-81. Confidential Information.

Sec. 28-81(1) Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to Section 28-5.

Sec. 28-81(2) If the protestant believes the protest contains material that should be withheld, a statement advising the Contract Officer of this fact shall accompany the protest submission in accordance with Section 28-5.

Sec. 28-82. Decision by the Contract Officer.

Sec. 28-82(1) The Contract Officer shall issue a written decision within fourteen days after a protest has been filed pursuant to Section 28-78. The decision shall contain an explanation of the basis of the decision.

Sec. 28-82(2) The Contract Officer shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Sec. 28-82(3) The time limit for decisions set forth in Subsection (1) of this Section may be extended by the Director for a reasonable time not to exceed thirty days. The Contract Officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Sec. 28-82(4) If the Contract Officer fails to issue a decision within the time limits set forth in Subsection (1) or (3) of this Section, the protestant may proceed as if the Contract Officer had issued an adverse decision.

Sec. 28-82(5) The Contract Officer's decision shall contain a statement regarding the appeals process that is available pursuant to this Article.

Sec. 28-83. Remedies.

Sec. 28-83(1) If the Contract Officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with the procurement code, the officer shall implement an appropriate remedy.

Sec. 28-83(2) In determining an appropriate remedy, the Contract Officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) the seriousness of the procurement deficiency;
- (b) the degree of prejudice to other interested parties or to the integrity of the procurement process;

- (c) the good faith of the parties;
- (d) the extent of performance;
- (e) costs to the City;
- (f) the urgency of the procurement; and
- (g) the impact of the relief on the using agency's mission.

Sec. 28-83(3) An appropriate remedy may include one or more of the following:

- (a) Reject all bids, responses or proposals;
- (b) Terminate the contract;
- (c) Reissue the solicitation;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the procurement code;
- (f) Such other relief as is determined necessary to ensure compliance with the Charter and this Chapter.

Sec. 28-84. Appeals to the Director.

Sec. 28-84(1) An appeal from a decision entered or deemed to be entered by the Contract Officer shall be filed with the Director within seven days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Contract Officer.

Sec. 28-84(2) Content of Appeal. The appeal shall contain:

- (a) The information set forth in Section 28-78, including the identification of confidential information in the manner set forth in Section 28-81;
- (b) A copy of the decision of the Contract Officer; and
- (c) The precise factual or legal error in the decision of the Contract Officer from which an appeal is taken.

Sec. 28-85. Notice of Appeal.

Sec. 28-85(1) The Director shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested

parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

Sec. 28-85(2) The Director shall, upon request, furnish copies of the appeal to those named in Subsection (1) of this Section subject to the provisions of Section 28-81.

Sec. 28-86. Stay of Procurement during Appeal.

If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Director pursuant to Section 28-80, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the City.

Sec. 28-87. Contract Officer Report.

Sec. 28-87(1) The Contract Officer shall file a report on the appeal with the Director within seven days from the date the appeal is filed. At the same time, the Contract Officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to Section 28-85(2). The report shall contain copies of:

- (a) The appeal;
- (b) Any other documents that are relevant to the protest; and
- (c) A statement by the Contract Officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

Sec. 28-87(2) Extension for Filing of Report.

- (a) The Contract Officer may request in writing an extension of the time period setting forth the reason for extension.
- (b) The Director's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The Director shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Sec. 28-87(3) Comments on Report

- (a) The appellant shall file comments on the Contract Officer's report with the Director within seven days after receipt of the report. Copies of the comments shall be provided by the appellant to the Contract Officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.
- (b) The Director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in Subsection (3)(a) of this Section stating the reason an extension is necessary. The Director's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The Director shall notify the Contract Officer of any extension.

Sec. 28-88. Dismissal before Hearing.

The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

Sec. 28-88(1) The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

Sec. 28-88(2) The appeal is untimely pursuant to Section 28-84(1).

Sec. 28-89. Hearing.

Hearings on appeals of protest decisions shall be conducted in accordance with Section 28-113.

Sec. 28-90. Remedies.

If the Director sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with the Charter and/or this Chapter, remedies may be implemented pursuant to Section 28-83.

Sec. 28-91. Filing of a Contract Claim.

Content of Claim. The claim shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the claimant;
- (b) The signature of the claimant or its representative;

- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 28-92. Contract Officer's Decision.

Sec. 28-92(1) If a contract claim cannot be resolved by mutual agreement, the Contract Officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty days after the request is filed. Before issuing a final decision, the Contract Officer shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

Sec. 28-92(2) Final Decision. The Contract Officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract provision;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the Contract Officer's decision, with supporting rationale;
- (e) A statement regarding the appeals process that is available pursuant to this Article.

Sec. 28-93. Issuance of a Timely Decision.

Sec. 28-93(1) The time limit for decisions set forth in Section 28-92(1) may be extended for good cause. The Contract Officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

Sec. 28-93(2) If the Contract Officer fails to issue a decision within sixty days after the request on a claim is filed or within the time prescribed under Subsection (1) of this Section, the contractor may proceed as if the Contract Officer had issued an adverse decision.

Sec. 28-94. Appeals to the Director.

Sec. 28-94 (1) An appeal of a final decision of a Contract Officer on a claim shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the Contract Officer.

Sec. 28-94 (2) Content of Appeal. The appeal shall contain a copy of the decision of the Contract Officer and the basis for the precise factual or legal error in the decision of the Contract Officer from which an appeal is taken.

Sec. 28-94 (3) The Director may assign the claim to a hearing in accordance with Section 28-96 or to mediation services in accordance with Section 28-97 or to arbitration in accordance with Section 28-98.

Sec. 28-95. City Claims Against a Contractor.

All contract claims asserted by the City against a contractor that are not resolved by mutual agreement shall promptly be referred by the Contract Officer to the Director for a hearing, in accordance with Section 28-96, or mediation, in accordance with Section 28-97, or arbitration in accordance with Section 28-98.

Sec. 28-96. Hearing.

Hearings on appeals of claims decisions shall be conducted in accordance with Section 28-113.

Sec. 28-97. Mediation.

Contract claims may be resolved utilizing mediation services if the Director determines the use of such services is in the best interest of the City.

Sec. 28-98. Arbitration.

Contract claims may be resolved utilizing arbitration if the Director determines the use of arbitration is in the best interest of the City. The claim shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the City, in accordance with the provisions of the Arizona Revised Statutes, Article 1, Chapter 9, Title 12.

Sec. 28-99. Authority to Debar or Suspend.

The Director has the sole authority to debar or suspend a person from participating in City procurements.

Sec. 28-100. Debarment or Suspension Causes.

The causes for Debarment or Suspension shall be limited to the following:

Sec. 28-100(1) Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

Sec. 28-100(2) Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

Sec. 28-100(3) Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.

Sec. 28-100(4) Violations of contract provisions within three years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action:

- (a) Abandonment of a contract without good cause; or
- (b) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- (c) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or
- (d) failure to pay a contractor, subcontractor or material provider as required by A.R.S. Section 32-1129.

Sec. 28-100(5) A determination by the Arizona Registrar of Contractors that the contractor has violated the provisions of A.R.S. Section 32-1129 or a finding of responsibility by the municipal court for a violation of Tucson Code Section 11-38.

Sec. 28-100(6) Any other cause that the Director reasonably determines to be so serious and compelling as to affect responsibility as a City contractor, including

suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this Section.

Sec. 28-101. Matters Not Proper for Debarment or Suspension.

Any conviction or judgment dated more than three years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

Sec. 28-102. Initiation of Debarment.

Upon receipt of information concerning a possible cause for debarment, the Director may investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may debar a person in accordance with this chapter.

Sec. 28-103. Period of Debarment.

Sec. 28-103(1) The period of time for a debarment shall not exceed three years from the date of the debarment determination.

Sec. 28-103(2) If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

Sec. 28-104. Notice.

If the Director implements debarment, the Director shall notify the person in writing within seven days of the debarment action by certified mail, return receipt requested or by any other method that provides evidence of receipt. The person may submit a request to the Director for an administrative hearing within fourteen days of issuance of the Director's debarment action. If a hearing is granted, it shall be conducted in accordance with this Article.

Sec. 28-105. Notice to Affiliates.

Sec. 28-105(1) If the Director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

Sec. 28-105(2) The affiliate shall in writing advise the Director within thirty days of receipt of the notice under Section 28-104 of its intention to appear under Subsection (1) of this Section. Failure to provide written notice of appearance within the thirty-day period shall be a waiver of the right to appear in the hearing.

Sec. 28-106. Imputed Knowledge.

Sec. 28-106(1) Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor.

Sec. 28-106(2) The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, or approval, of, the contractor.

Sec. 28-107. Suspension.

Sec. 28-107(1) The Director may suspend a person from receiving any award in order to protect the City's interests.

Sec. 28-108. Period and Scope of Suspension.

The period of suspension shall not be more than sixty (60) days unless the Director is informed of compelling reasons to extend the period of suspension.

Sec. 28-109. Suspension Notice, Hearing, Determination and Appeal.

Sec. 28-109(1) The Director shall notify the person suspended by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec. 28-109(2) The notice of suspension shall state:

- (a) The basis for suspension;
- (b) The period, including dates, of the suspension;
- (c) That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
- (d) That the person may request a hearing on the suspension if the person files a written request for a hearing with the Director within seven days after receipt of the notice.

Sec. 28-109(3) If a suspended party requests a hearing, the Director may arrange for a hearing.

Sec. 28-109(4) In the event a hearing is conducted, it shall occur to the extent practicable, in accordance with this Article.

Sec. 28-110. Reinstatement.

Sec. 28-110(1) The Director may at any time after a final decision on debarment or suspension reinstate a debarred or suspended person or rescind the debarment or suspension upon a determination that the cause upon which the debarment or suspension is based no longer exists.

Sec. 28-110(2) Any debarred or suspended person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment or suspension no longer exists or has been substantially mitigated.

Sec. 28-110(3) The Director may require a hearing on the request for reinstatement.

Sec. 28-110(4) The decision on reinstatement shall be in writing and specify the factors on which it is based.

Sec. 28-111. Limited Participation.

The Director may allow a debarred or suspended person to participate in City contracts on a limited basis during the debarment or suspension period upon a written determination that participation is advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Sec. 28-112. Master List for Suspension and Debarment.

Sec. 28-112(1) The Director shall maintain a Master List of debarments and suspensions under this Article.

Sec. 28-112(2) The Master List shall show as a minimum the following information:

- (a) The names of those persons whom the City has debarred or suspended under this Article;
- (b) The basis for the action;
- (c) The period of debarment or suspension, including the expiration date; and
- (d) The name of the debarring or suspending agency, if the City's debarment or suspension is based on debarment or suspension by another governmental agency.

Sec. 28-112(3) The Master List shall include a separate section listing persons voluntarily excluded from participation in City contracts.

Sec. 28-113. Hearing Procedures.

Sec. 28-113(1) If a hearing is required or permitted under this Article, the Director shall appoint a hearing officer.

Sec. 28-113(2) If a hearing is required or permitted under this Article, the Hearing Officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.

Sec. 28-113(3) The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

Sec. 28-113(4) The Hearing Officer may:

- (a) Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (b) Require parties to state their positions concerning the various issues in the proceeding;
- (c) Require parties to produce for examination those relevant witnesses and documents under their control;
- (d) Rule on motions and other procedural items on matters pending before such officer;
- (e) Regulate the course of the hearing and conduct of participants;
- (f) Establish time limits for submission of motions or memoranda;
- (g) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - (i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - (ii) Excluding all testimony of an unresponsive or evasive witness; and
 - (iii) Expelling the person from further participation in the hearing;
- (h) Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;

- (i) Administer oaths or affirmations; and
- (j) Assess or apportion damages or costs associated with the hearing matter or the proceedings to the parties involved.

Sec. 28-113(5) A transcribed record of the hearing shall be made available at cost to the requesting party.

Sec. 28-114. Recommendation by the Hearing Officer.

Sec. 28-114(1) The Hearing Officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

Sec.28-114(2) The Director may affirm, modify, or reject the Hearing Officer's recommendation in whole or in part, may remand the matter to the Hearing Officer with instructions, or make any other appropriate disposition.

Sec. 28-115. Final Decision by the Director.

A decision by the Director shall be final. The decision shall be sent to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt. The decision shall state that any party adversely affected may within ten days request a rehearing with the Director. If a stay was issued, the final decision by the Director shall lift any such stay, unless the Director determines that the continued stay is necessary to protect the substantial interest of the City.

Sec. 28-116. Rehearing of Director's Decision.

Sec. 28-116(1) Any party, including a Contract Officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds.

- (a) The request for rehearing shall be filed with the Director within ten days after receipt of the decision and shall include any supporting affidavits.
- (b) The request shall be clearly designated as a "Request for Rehearing."
- (c) The Director shall within five days after the request is filed notify interested parties of the request by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec. 28-116(2) An interested party may, within ten days after receipt of the notice, file a response including opposing affidavits.

Sec. 28-116(3) Any argument not raised in the request or in a response is waived.

Sec. 28-116(4) The Director may require the filing of written briefs and may provide for oral argument.

Sec. 28-116(5) A rehearing of the decision may be granted for any of the following causes:

- (a) Irregularity in the proceedings before the Director or an abuse of discretion by the Director, depriving the requesting party of a fair hearing;
- (b) Misconduct of the Director, the Director's staff, the Hearing Officer or any party;
- (c) Accident or surprise that could not have been prevented by ordinary prudence;
- (d) Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
- (e) Excessive or insufficient penalties;
- (f) Error in the admission or rejection of evidence or other error of law occurring at the hearing;
- (g) A showing that the decision is not justified by the evidence or is contrary to law.

Sec. 28-116(6) The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.

Sec. 28-116(7) The Director, within the time for filing a request for rehearing under this Section, may, on the Director's own initiative, order a rehearing of the Director's decision for any reason for which the Director might have granted a rehearing on request of a party.

**Sec. 28-117. Judicial Review of Protests, Claims,
Debarments or Suspensions.**

Any final decision of the Director of a protest (§28-77 et. seq.), claim (§28-91 et. seq.), debarment (§28-99 et. seq.), or suspension (§28-99 et. seq.) under this Chapter is subject to special action review by any party to the proceeding. Exhaustion of the procedures set forth in this Code shall be a condition precedent to seeking judicial review and the party seeking review shall file the complaint within thirty days of a final decision by the Director .

Sec. 28-118. Exclusive Remedy.

Notwithstanding any law to the contrary, this Article shall provide the exclusive procedure for asserting a claim or cause of action against this City arising in relation to any procurement conducted under this Chapter.

Secs. 28-119 through 28-125. Reserved.

ARTICLE X. COOPERATIVE PURCHASING

Sec. 28-126. Definitions.

In this Article, unless the context otherwise requires:

Sec. 28-126(1) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 28-126(2) "Eligible Public Procurement Unit" means any state, county, city, town, and any other political subdivision, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction, and any not-for-profit entity.

Sec. 28-127. Applicability.

Agreements entered into pursuant to this Article shall be limited to the areas of procurement, warehousing or materials management.

Sec. 28-128. Cooperative Purchasing Agreements Required.

The City is not authorized to participate in cooperative purchasing unless a cooperative purchasing agreement is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All agreements entered into pursuant to this Article shall be approved by the Director.

Sec. 28-129. Cooperative Purchasing Authorized.

The City may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in this Article is exempt from Section 11-952, Subsections D, E and F. Parties under a cooperative purchasing agreement may:

Sec. 28-129(1) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 28-129(2) Cooperatively use materials or services.

Sec. 28-219(3) Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 28-129(4) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 28-129(5) On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in Paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

Secs. 28-130 and 28-131. Reserved

ARTICLE XI. (RESERVED)

Secs. 28-135 and 28-136. Reserved

ARTICLE XII. AFFIRMATIVE ACTION BY CITY CONTRACTORS

Sec. 28-137. Definitions.

In this Article, unless the context otherwise requires:

Sec. 28-137(1) "Affirmative action program" means a written plan, which is designed to promote employment of minorities and females as specified by applicable Federal, State, and local laws.

Sec. 28-137(2) "Disability" means an individual person who has, has a history of, or is regarded as having a physical or mental impairment, which substantially limits one or more major life activities.

Sec. 28-137(3) "Minority" means a person of the following ethnic groups: Hispanic, Black, Asian and Native American in accordance with Federal Regulations Section 124.

Sec. 28-138. Provision Against Discrimination Required in all City Contracts.

All contracts exceeding the amount provided by Section 28-20 (Small Purchases) may provide that the contractor will abide by the following provisions:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, not related to job performance, national origin, sexual or affectional preference, or marital status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual or affectional preference, or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, physical handicap not related to job performance, national origin, sexual or affectional preference, or marital status.
- (c) The contractor will furnish all information and reports required by the City and will permit access to books, records, and accounts by the City for purposes of investigation to ascertain compliance with this section.
- (d) In the event of the contractor's noncompliance with the nondiscrimination clauses of his contract, the contract may be cancelled, terminated or suspended in whole or in part and

the contractor may be debarred in accordance with Section 28-97.

Sec. 28-139. Reporting Requirements.

Sec. 28-139(1) All contractors shall upon request submit annually the following reports to the City's Equal Opportunity Office.

- (a) A copy of the City of Tucson Employment Utilization Report.
- (b) A completed City of Tucson Affirmative Action Questionnaire.
- (c) An Affirmative Action Plan, if applicable.

Sec. 28-139(2) A contractor, upon request, must have the above listed items (a), (b), and (c) on file prior to the contract. The affirmative action plan, affirmative action questionnaire and employment utilization report, once approved by the City will be placed on file for a period of one year; therefore these affirmative action documents need not be submitted for each separate contract. A person may renew each affirmative action document prior to the expiration of the year's time by submitting new documents or revisions. Submittal of any approved revisions will automatically reactivate the affirmative action documents for another year. If a person wishes the previously approved documents to remain unchanged, the contractor must inform the affirmative action officer of this fact and request in writing that the documents be reactivated for another year.

Sec. 28-140. Duties and Requirements of Contractors on City Contracts; Responsibility for Implementation.

Sec. 28-140(1) A contractor may not be eligible for an award of the City construction contract unless it has complied with the reporting requirements of this article.

Sec. 28-140(2) The hiring goals, if applicable, established by the division for each contract shall reflect the minority applicant pool available within Pima County for the specific services provided for under the contract.

Sec. 28-140(3) Goals and Timetables: An affirmative action plan may set forth, as a minimum, a hiring and promotion plan for minorities and women in percentages which reflect the minority applicant pool available within Pima County for the specific services provided for under each contract. Minorities, for the purpose of this Subsection, shall be those groups defined in Sections 28-137(2) and (3) and women. Firms which demonstrate good-faith efforts to reach the stated percentage goals will be deemed to be in compliance with the City's affirmative action objectives, even though the firm has not met the staffing utilization goals on a particular contract. Notwithstanding the fact that a contractor has complied with the goal of women and/or minority utilization set forth above, the

contractor may be required to continue to make a good-faith effort to hire, when the opportunity arises, women and minorities of those races and in those trades that are substantially under-represented in the contractor's work force.

Sec. 28-140(4) The City's Equal Opportunity Office shall be responsible for administering the provisions of this article. This Office may establish standards to be met by contractors in order to be eligible for award of contracts. Contractors may be requested to execute such further forms and submit documentation at such time and as may be required by the division. In monitoring the employment policies and practices of firms doing business with the City, the division is authorized to conduct "no notice", on-site employee interviews and compliance reviews.

Sec. 28-140(5) All employees who are not specifically provided for in Subsection (3) of this Section shall be covered by this Article but shall not be subject to the percentage goals and timetables established in Subsection (3).

Sec. 28-141. Inability or Failure to Comply with Affirmative Action Obligations.

A contractor who encounters problems in complying with its affirmative action obligations may document its good-faith efforts to comply with those requirements in the manner prescribed by the division. The Equal Opportunity Office shall consider the validity of the good-faith efforts on the part of the contractor and may impose such sanctions as are provided in Section 28-144 of this Article, based upon consideration of the facts in each specific case. Labor unions are required to make good-faith efforts to cooperate with the contractors in fulfilling the staffing utilization goals set forth in this Article.

Sec. 28-142. Administrative Responsibility.

The Equal Opportunity Office shall be responsible for administering the provisions of this Article by formulating specific affirmative action procedures which further the policy of the City as set forth herein.

Sec. 28-143. Exemptions.

Sec. 28-143(1) Federally funded contracts shall be exempt from the provisions of this Article.

Sec. 28-143(2) A contract otherwise subject to the provisions of this Article may be exempt by the Equal Opportunity Office Director from compliance with its provisions in the case of an emergency or when special circumstances exist which, in the interest of the City, compel such exemption.

Sec. 28-144. Sanctions.

Any contractor who knowingly submits a false statement under this Article, or any contractor who fails to comply with the provisions of the affirmative action plan submitted, or with any other requirements of this Article, may be subject to those sanctions allowed by law, including but not limited to cancellation, termination, suspension of the contract or debarment in accordance with Section 28-9-7.

ARTICLE XIV

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM

Sec. 28-147. Definitions.

This Article incorporates all definitions and terms defined in Chapter 28 of the Tucson City Code. The application of definitions specifically included herein are limited to contracts initiated under the Minority and Women owned Business Enterprise Program.

Solicitation means an invitation for bids, a request for proposals, a request for quotations, a request for technical offers, or any other invitation or request by which the City invites a person to participate in procurement.

Professional Services means the services of an engineer, an architect or a landscape architect licensed to practice in the State of Arizona.

Formal Solicitation Threshold means the dollar amount as specified in section 28-20(1).

Certified MBE or WBE shall mean a local disadvantaged business enterprise (DBE) minority or women-owned business has completed the certification application process for certification and has met the requirements set forth in Title 49, Code of Federal Regulations, Part 26 (49 CFR Part 26) -the United States Department of Transportation Office of Small and Disadvantaged Business Enterprise. All criteria and definitions relative to DBE and/or MWBE certification shall be followed in accordance with 49 CFR Part 26 (and as it may be amended).

City shall mean City of Tucson.

Commercially useful function shall mean the performance of real and actual services in the discharge of any contractual endeavor. An MBE or WBE contractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising

the work involved. In determining whether an MBE or WBE is performing a commercially useful function, factors including, but not limited to, the following will be considered:

- (a) The amount of work subcontracted;
- (b) The type of prime contract;
- (c) Whether the business has the skill and expertise to perform work for which it is being/has been certified;
- (d) Whether the business actually performs, manages and supervises the work for which it is being/has been certified;
- (e) Whether the business purchases goods and/or services from a non-minority owned business enterprise and resells goods to the City, City contractor, or other person doing business with the City for the purpose of allowing these goods to be counted towards the fulfillment of MBE or WBE utilization goals; and
- (f) Standard industry practices.

Controlled shall mean the minority or woman owner(s) possess: (1) legal authority to manage business assets, goodwill and daily operations of the business; and, (2) actively and continuously exercise managerial authority in determining the policies and in directing the operations of the business. If the non-minority/women owner(s) is disproportionately responsible for operation of the business, the business is not controlled by a minority or a woman.

Disparity shall mean an indication of underutilization or overutilization of a MWBE group. The disparity ratio used in the DSII measures the difference between the proportion of available firms and the proportion of dollars those firms received. As the proportion of contract dollars received becomes more statistically significant than the proportion of available MWBEs, an inference of discrimination can be made. A disparity ratio of one (1) indicates no disparity (i.e., utilization equals availability). A disparity ratio of less than one (1) indicates that the percentage of utilization for WBEs or a particular minority group is less than the percentage of that group's availability. A disparity ratio greater than one (1) indicates that the percentage of utilization for women or a particular minority group is more than the percentage of that group's availability. The concept of statistical significance as applied to disparity analysis is used to determine if the difference between the utilization and availability of MWBEs could be attributed to chance. Ordinarily, significance testing employs the t-distribution to measure the differences

between the two proportions. The number of data points and the magnitude of the disparity affect the robustness of this test. The customary approach is to treat any variation greater than two standard deviations from what is expected as statistically significant.

Eligible contract relative to general procurement of goods, services and materials shall mean any contract for goods, materials, or services, except professional and construction services, in which the estimated cost is two hundred and fifty thousand dollars (\$250,000.00) or below, unless otherwise precluded by law. Eligible contract does not include sole source contracts, petty cash purchases, small purchases, emergency purchases, contracts with nonprofit agencies, or contracts for non-competitive purchases, as provided under provisions of the City's Procurement Code.

Eligible contract relative to professional services shall mean contracts for professional services as defined within this section.

Eligible contract relative to construction shall mean any construction or construction services contract undertaken by the City, unless otherwise precluded by law, provided the estimate for construction meets or exceeds fifty thousand dollars (\$50,000.00). An eligible contract does not include: any construction project in which the estimated contract value is below fifty thousand dollars (\$50,000.00); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement) or 28-22 (emergency procurement) of this Code.

Joint venture shall mean an association of two (2) or more persons, partnerships, corporations, business enterprises or any combination of these entities, established to form a single business enterprise, but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The MBE or WBE partner(s) must be responsible for a clearly defined portion of the work performed, which is set forth in detail and separately from the work to be performed by the non-MBE/WBE partner, and which is assigned a commercially reasonable dollar value. Furthermore, the MBE or WBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings. Only the portion of work, supplies and/or services attributed to the MBE and/ or WBE, as a member of the joint venture, may satisfy or be counted towards relevant MBE/WBE participation goals.

Local shall mean that the principal place of business of the enterprise is physically located within the Tucson Metropolitan Statistical Area (MSA) (Pima County).

Minority shall mean citizens or lawful permanent residents of the United States, and includes any individual in the following groups,

members of which are rebuttably presumed to be socially and economically disadvantaged, in accordance with 49 CFR Part 26:

- (a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
- (b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture of origin, regardless of race;
- (c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Somoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvala, Nauru, Federated States of Micronesia, or Hong Kong.
- (e) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

Minority-owned business enterprise (MBE) shall mean a local disadvantaged MBE which is an independent and continuing business for profit, performing a commercially useful function, owned and controlled by one or more minority persons (Asian, Black, Hispanic or Native American) who possess an interest of fifty-one (51) percent or more in the business in accordance with 49 CFR Part 26.

Office shall mean a fixed established place where work of a clerical, administrative, professional or production nature is carried on and directly related to the business being certified. A temporary location, or movable property, or one that is established to oversee a project does not qualify as an office.

Owned, for purposes of determining whether an enterprise is owned by an MBE or WBE, shall mean that the minority individual or woman, as the context requires and in accordance with 49 CFR Part 26: (a) possess in his or her own name at least fifty-one (51) percent interest in the business, along with the incidents of ownership; (b) contributed capital, equipment, and expertise to the business equal to at least the required ownership percentage; (c) acquired the interest with his or her own financial resources or has put his or her own financial resources at

risk in the operation of the enterprise; and, (d) enjoys the customary incidents of ownership and shall have a risk in profits commensurate with the ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.

Race/gender conscious measure or activity or program is one that is focused specifically on addressing identified disparity.

Race/gender neutral measure or activity or program is one that is, or can be, used to assist all small businesses and one which supports the prevention of discrimination/disparity in procurement practices.

Responsive Bidder, respondent or offeror shall mean a party, who submits a bid, proposal, statement of qualifications, technical offer or other response to a solicitation, which conforms in all material respects to the requirements set forth in solicitation.

United States Code of Federal Regulations, Title 49 Part 26 (49 CFR Part 26) – the City of Tucson is a recipient of funding under the United States Department of Transportation (US DOT) Office of Small and Disadvantaged Business Enterprise, and must comply with all requirements under 49 CFR Part 26 relative to federal contracts. The City applies 49 CFR Part 26 standards to all DBE certification applications and makes specific distinction for local MBE and WBE applicant firms as those located in the Tucson MSA (Pima County). This distinction certifies firms which meet the certification standards as set forth in 49 CFR Part 26 as MBES or WBES and qualifies such firms to participate in the local MWBE program.

(a) 49 CFR Part 26 requires reciprocity for DBE certification by all recipients of U.S. DOT funding within the State of Arizona. The Arizona Department of Transportation, the City of Phoenix and the City of Tucson have submitted the Arizona Unified Certification Plan (AZUCP) to the Federal Transit Administration of the U.S. Department of Transportation (FTA) and upon approval the three entities will implement the plan within an eighteen month period.

Woman-owned business enterprise (WBE) shall mean a local disadvantaged WBE which is an independent and continuing business for profit, performing a commercially useful function, owned and controlled by one or more non-minority women who possess an interest of fifty-one (51) percent or more in the business, in accordance with 49 CFR Part 26.

Woman/minority business enterprise (W/MBE) shall mean a local disadvantaged business which is eligible for certification in accordance with 49 CFR Part 26, except that the aggregate ownership interest of the woman and the minority equals or exceeds fifty-one (51) percent of the

business. A W/MBE shall qualify and be deemed an MBE or WBE, but not both, for purposes of this Article.

Sec. 28-148. Administrative Provisions.

Sec. 28-148(1). Duties of the Equal Opportunity Office. The Equal Opportunity Office (EOO) shall implement and monitor the minority and women-owned business enterprise program. The EOO Director shall be the chief administrative officer for the program and consistent with all provisions of this Code shall have the following duties and authority:

- (a) The administration and enforcement of this article.
- (b) Coordination of the development of administrative procedures and policies with the applicable department(s) to effectuate this article.

Sec. 28-148(2). Periodic review and reporting requirements.

- (a) The EOO shall be responsible for monitoring and reporting City utilization of minority and women-owned businesses and shall, through a coordinated record keeping and reporting effort with all applicable departments, ensure that data and records are maintained in order to ensure on going analysis and evaluation of the MWBE program and its objectives. The following reports shall be provided.
 - (1) An annual M/WBE utilization and availability report based on City contract awards, contract payments and other relevant data with a statistical disparity analysis.
 - (2) An annual review and evaluation of the effectiveness of the M/WBE program and its provisions. To accomplish this evaluation the EOO Director may, in addition to the above reports, provide for other studies and surveys as needed.
 - (3) Recommendations to the City Manager and Mayor and Council regarding additional efforts necessary to ensure M/WBE participation, pursuant to periodic review and reporting requirements contained herein.
 - (b) For purposes of monitoring, analyses, and future disparity analyses and studies, all City departments shall maintain and retain complete and accurate records relating to procurement contracting.
 - (c) The procurement department shall maintain records of professional service contract selections and the application of preference points, solicitation data on the inclusion of MWBEs for

procurements below the formal solicitation threshold and other data related to selection of contracts and services provided.

Sec. 28-148(3). Administrative provision for certification. The EOO shall be responsible for the certification and verification of program eligibility. Disadvantaged business enterprise criteria and definitions shall be applied in accordance with 49 CFR Part 26 to establish eligibility for certification of local firms as a disadvantaged MBE or WBE. Only local firms shall qualify for certification as a MBE or WBE. Firms outside of the MSA that meet the eligibility criteria for certification will qualify only as a DBE and are not eligible to participate in the local MWBE program. The EOO shall:

- (a) Maintain a listing of certified M/WBEs segmented into specified trades or lines of business to be maintained as public record.
- (b) Participate and effectuate reciprocity of DBE certification through the Arizona Unified Certification Plan (AZUCP), in accordance with 49 CFR Part 26 and in collaboration with the Arizona Department of Transportation and the City of Phoenix, under the authority of the Federal Transit Administration (FTA). The date of effect of the AZUCP shall be within eighteen months from the date of final FTA approval of the plan.

Sec. 28-148(4). Standards for M/WBE certification. The Equal Opportunity Office shall certify and monitor contractors, subcontractors, vendors and suppliers as bona fide MBEs or WBEs for participation in the M/WBE program based on the certification criteria and definitions as set forth in 49 CFR Part 26, which includes but are not limited to the following standards:

- (a) An MBE or WBE under this program shall be an independent business enterprise, continuing in operation for profit, performing a commercially useful function, owned and controlled by one or more minorities or women respectively who are citizens or lawful permanent residents of the United States. The ownership and control by a minority or a woman shall be real and substantial, and shall be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
- (b) An eligible MBE or WBE shall be a local enterprise as defined by this article and an active participant within the Tucson MSA marketplace (Pima County).
- (c) The M/WBE applicant must be disadvantaged as defined in 49 CFR Part 26.

(d) The M/WBE applicant is responsible for cooperating with the EOO and providing all necessary documentation in support of all eligibility, as set forth in 49 CFR Part 26 and this article. A complete certification application is required along with supportive documents including, but not limited to, three years of income tax records (personal and business), bank signature card, and a current personal net worth statement, and various other documents confirming ownership, management and control of the M/WBE applicant firm. Additionally, an on-site audit is required at the firm's place of business.

Sec. 28-148(5). Certification investigations. In accordance with 49 CFR Part 26 the Equal Opportunity Office may investigate MBE and WBE ownership, contract transactions, and other relevant arrangements beyond formal documentation at initial certification, during certification and during the annual update. To the extent reasonably necessary to ensure compliance, such investigations may include, but are not limited to, the following:

- (a) Personal interviews with persons having knowledge or relevant information relating to an M/WBE's eligibility, certification or decertification.
- (b) Personal interviews with bidders, contractors, vendors and/or suppliers involved in a joint venture or contractual relationship with the MBE or WBE.
- (c) Reviewing records pertaining to certification.
- (d) Conducting random on-site visits, audits and/or relevant inquiries.

Sec. 28-148(6). Certification period. In accordance with 49 CFR Part 26, the Equal Opportunity Office and/or AZUCP shall grant certification to an approved MBE or WBE for a period of not less than three (3) years with the requirement for an annual update which affirms that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or material changes in the information provided in its application form. If an MBE or WBE is denied certification on the basis of the information submitted, the firm may not reapply for a period of one (1) year from the date of the notice of denial, provided that such firm shall have the right to appeal such denial.

Sec. 28-148(7). Continuing certification. All certified MBEs and WBEs must re-submit disclosure affidavits to the EOO annually as stipulated in Sec. 28-148(6) and in accordance with 49 CFR Part 26.

Sec. 28-148(8). Decertification. The Equal Opportunity Office may decertify a business enterprise that it or any other governmental agency participating in the AZUCP determines is no longer a bona fide MBE/WBE because of, but not limited to, the following, in accordance with 49 CFR Part 26:

- (a) A change in ownership and/or control.
- (b) A change in management structuring.
- (c) Exceeding small business administration size limits by industry designation.
- (d) Exceeding program standard for owner(s) personal net worth.

Sec. 28-149. Certification remedies.

Sec. 28-149(1). Appeals process. All adverse certification determinations made by the EOO shall be made in writing and shall include the reasons for the determination. The notice shall be sent to the affected party and the affected party shall have the right to seek administrative review as provided herein.

Sec. 28-149(2). Right to protest certification decision. Upon MBE or WBE certification, continuing certification, or decertification, an aggrieved party has a right to protest.

(a) An aggrieved M/WBE applicant may submit a protest in writing to the EOO Director within seven (7) working days from the receipt of the adverse decision notice. The protest must include the reasons and factual grounds of the protest with any supporting documents.

(b) Within fifteen (15) working days of receipt of the protest, the Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the reason(s) and explanation for the decision.

(c) Sec. 28-149(2) (a) and (b) shall remain in effect only until the AZUCP is effectuated, at which time, procedures for protest of a certification decision shall be available from the EOO or other participating entities (Arizona Department of Transportation and the City of Phoenix). The AZUCP is in accordance with 49 CFR Part 26.

Sec. 28-149(3). Petition and process for a certification appeal hearing. After all departmental remedies have been exhausted, the aggrieved party may request an appeal hearing with the EOO Director pursuant to 49 CFR Part 26. The request must be in writing and received by the EOO within

seven (7) working days of the aggrieved party's receipt of the decision notice from the EOO Director. The aggrieved party shall set forth the reasons for the appeal in the EOO Director's decision from which the appeal is being made.

(a) The EOO Director shall be responsible for retaining an independent Hearing Officer, as necessary.

(b) The Hearing Officer shall have knowledge of the certification standards/criteria as set forth in 49 CFR Part 26 as well as construction and procurement law and the Tucson Procurement Code, including the minority and women-owned business enterprise program. Within five (5) working days of receipt of the notice of appeal from the aggrieved party, the EOO Director shall forward the notice to the Hearing Officer.

(c) The Hearing Officer shall set a hearing date as soon as administratively feasible. The Hearing Officer shall cause notice of the hearing to be served upon all parties.

(d) At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to produce any and all evidence in either party's possession concerning the certification determination of noncompliance with the requirements of this article or the denial of certification as an MBE or WBE.

(e) The Hearing Officer shall as soon as administratively possible make a written decision on the appeal, which decision shall affirm, alter, or reverse the denial of certification by the EOO. If the Hearing Officer finds for the aggrieved party, as appropriate, the business shall be certified as an MBE or WBE, and added to the certification database maintained by the EOO and included in the City's MWBE/DBE directory at the next publishing date.

(f) Sec. 28-149(3) (a), (b), (c), (d), and (e) shall remain in effect only until the AZUCP is effectuated, at which time, procedures for petition *and process for an appeal hearing* of a certification decision shall be available from the EOO or other participating entities (Arizona Department of Transportation and the City of Phoenix). The AZUCP is in accordance with 49 CFR Part 26.

Sec. 28-150. Procurement of construction and construction services contracts.

Sec. 28-150(1). Annual MBE and WBE prime contractor and subcontractor participation goals. The EOO shall establish annual MBE and/or WBE prime contractor and subcontractor participation goals for City construction contracts. Annual participation goals shall be

established for MBE/WBES when there is a determination of significant underutilization. When disparity is not indicated, race/gender neutral means shall be utilized. In all instances where race/gender-neutral means are utilized, if significant disparity re-emerges, race/gender conscious techniques shall be utilized on a non-permanent basis to correct identified disparities.

(a) Annual MBE and WBE prime contractor and subcontractor participation goals are to be reviewed, evaluated and recommended by the EOO based upon, but not limited to, the following:

(1) The present availability of certified MBEs and WBEs that are identified as prime contractors and subcontractors at the time of the review/evaluation.

(2) A forecast of eligible contracts to be awarded within the fiscal year and the level of participation by such firms in past contracts awarded by the City.

(3) Review and analysis of the reports including, but not limited to, those generated in accordance with section 28-148(2) which shall provide disparity analyses.

(b) Annual MBE and/or WBE participation goals are only intended to be a benchmark/target for evaluating the overall performance of the M/WBE program in the elimination of the existing disparity and/or in ensuring that once eliminated, disparity does not re-emerge. Participation goals are narrowly tailored, reasonable and attainable targets based on availability and are not, and shall not be quotas.

(1) On individual contracts or projects, annual MBE and/or WBE goals may not apply or may be adjusted depending upon: the availability of qualified M/WBE firms, the nature of the project, the adverse impact on non-M/WBE firms, the good faith efforts of contractors and other factors as determined by the EOO.

Sec. 28-150(2). Eligible contract subcontractor MBE/WBE participation goals. The EOO Director, in conjunction with the appropriate customer departments, shall review each eligible contract for potential MBE and/or WBE subcontractor participation. Where there is sufficient availability of MBEs and/or WBEs, the EOO Director may adopt individual project participation goals.

(a) Specific participation race and/or gender conscious goals are to be established on a contract by contract basis in accordance with section 28-150(1) and according to the criteria established by the EOO and shall include, but not be limited to, the following:

- (1) The present availability of certified MBEs and WBEs that are willing and able to provide labor and material on a particular project, in the industry/trade classifications relevant to the project.
- (2) The ability of qualified M/WBE firms to readily expand their capacity to meet additional demand.
- (3) A forecast of eligible contracts to be awarded within the fiscal year. The level of participation by such firms in past contracts awarded by the City.
- (4) The design plans and project specifications.
- (5) The annual subcontractor participation goals.
- (6) Race/gender conscious goals shall be established only in cases where significant statistical disparity exists or re-emerges.

(b) M/WBE goals for a project must be clearly published as part of the contract specifications in the MWBE specifications issued with each Invitation For Bid (IFB) or Request for Qualifications (RFQ).

(c) M/WBE goals shall apply to the initial contract award amounts and all subsequent contract modifications and change orders that serve to increase the dollar value of the initial contract to the extent that such modifications or change orders are applicable to M/WBE participation.

Sec. 28-150(3). Construction contracts under the City's formal solicitation threshold. For construction contracts under the City's formal solicitation threshold, the department of procurement shall solicit, if available, as indicated within the monthly City of Tucson certified MWBE/DBE directory, a minimum of one M/WBE contractor from the City's M/WBE directory to quote or bid on the contract. This shall be in accordance with section 28-150(1). The procurement department shall maintain records of solicitation activities, including MBES and WBES, and the resulting award information for each project.

Sec. 28-150(4). Contractor's MBE/WBE plan. Notwithstanding its compliance with any other requirement of the Tucson Procurement Code, no bidder shall be awarded a contract for an eligible contract, unless the Equal Opportunity Office has approved the M/WBE plan or granted a waiver on the project. Such MBE/WBE plan shall be designed to meet the applicable race/gender conscious project goals which shall be incorporated into the contract. Each bidder shall submit a completed and signed MBE/WBE plan or fully documented waiver request with the bid

submission or as otherwise stipulated in the solicitation for alternative project delivery contracting methods, such as job order contracts, listing the names, addresses and contact persons of the MBES and/or WBES to be used in the contract, the type of work or service each business will perform, and the percentage and/or dollar amount of the total contract for each MBE or WBE firm. Contractors may meet the M/WBE project goals through the following methods:

(a) *Subcontractor participation.* Where a prime contractor utilizes one or more certified MBE/WBE subcontractors to satisfy its race/gender conscious MBE and/or WBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

(1) If a certified MBE and/or WBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such MBE/WBE subcontractor is performing a commercially useful function. If a MBE/WBE subcontractor subcontracts a significantly greater portion of its work to a non-MBE/WBE, than would be expected by standard industry practices, it shall be presumed that the MBE/WBE is not performing a commercially useful function.

(2) MBE/WBE prime contractors may not use their own participation towards fulfillment of the project's subcontracting goals.

(b) *Supplier participation.* The bidder may contract with one or more -certified MBE and/or WBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credits toward MBE/WBE goals. The value of the commercially useful function to be performed by such MBE/WBEs and credited toward satisfaction of the applicable MBE/WBE goals is as follows:

(1) If a certified MBE and/or WBE supplier manufactures the goods supplied, one hundred (100%) percent of the contract amount is credited towards the applicable MBE/WBE participation goal.

(2) If a certified MBE and/or WBE supplier is a wholesaler warehousing the goods supplied or a manufacturer's representative, then the total contract amount is credited toward the established MBE/WBE goal; however, only twenty-five (25%) percent of the total MBE/WBE project goal may be met in this manner.

(3) If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise

would be required, or the twenty-five (25) percent limit for suppliers may be increased, or a combination of these two (2) methods may be utilized.

(c) *Joint Venture.* Where economically feasible, the EOO shall encourage the establishment of joint ventures to ensure prime contracting opportunities for MBEs and WBEs on all eligible contracts.

(1) Where a contractor engages in a joint venture to satisfy its MBE and/or WBE goal commitment, the EOO Director shall review and approve all contractual agreements.

(2) The EOO shall determine the degree of MBE or WBE participation resulting from the joint venture which may be credited toward the applicable MBE/WBE goals of the project.

(3) Only the portion of work, supplies and/or services attributed to the certified MBE and/or WBE, as a member of the joint venture, may satisfy or be counted towards relevant MBE/WBE participation goals.

(4) The bidder shall permit the EOO to review all records pertaining to joint venture agreements before and after the contract award, to the extent reasonably necessary to assess compliance with this article.

Sec. 28-150(5). Maintenance of records and reports by contractors.

Unless otherwise specified in the solicitation, contractors awarded eligible contracts shall submit a participation report which summarizes the number and dollar amount of all subcontract awards during the contract term and must submit the report to the EOO no later than one month after the contract has been awarded, and with the final payment request. In addition to the statutory requirement for retention, failure to submit the one month participation report of all proposed subcontractors will result in the City withholding an additional ten (10) percent of all future payments on the involved eligible contract until it is determined that the contractor is in compliance. Failure to submit the participation report at the time of request for final payment shall result in withholding final payment from the contractor until it is determined that the contractor is in compliance.

Sec. 28.150(6). Submission of MBE/WBE Plan. The City shall publish its MBE and/or WBE subcontracting goals in the solicitation and the specifications. All bidders shall submit the MBE/WBE goal plan with the bid unless otherwise specified.

(a) The completed and signed MBE/WBE plan for the project must include a list of names and addresses of the certified MBE/WBE subcontractors and/or suppliers to be used in the contract, the type of work or service each business will perform and

the percentage and/or dollar amount of each certified MBE/WBE's subcontract and/or suppliers of the total contract.

(b) The MBE/WBE plan shall certify that the bidder has met the established MBE/WBE project participation goals, or notwithstanding good faith efforts to meet the goals, the bidder has been unable to do so and therefore is entitled to a good faith effort waiver (partial or full). If the bidder's certification, the MBE/WBE plan or, if applicable, a fully documented good faith effort waiver (partial or full) is not submitted with the bid for any reason, the bid shall not be read. All bids that include the bidder's certification and the MBE and WBE goals plan and, if applicable, a fully documented good faith effort waiver shall be read, unless otherwise non-responsive.

(c) If the EOO determines that the contractor has failed to comply with the provisions of this article, the EOO may impose any or all of the following penalties on the contractor:

- (1) In addition to the statutory requirements for retention, withhold an additional ten (10%) percent of all future payments on the involved eligible contract until it is determined that the contractor is in compliance;
- (2) Withholding from the contractor all future payments on the involved project until it is determined that the contractor is in compliance; or
- (3) Rejection of future bids.

Sec. 28-150(7). Review of MBE/WBE Plans. The EOO Director shall review and evaluate the apparent low bidder's MBE and/or WBE goals plan and determine whether the bidder met the project goals for the contract, and approve or reject such plan. The EOO Director may clarify information relative to the MBE/WBE plan with the bidder and/or any listed subcontractors. For job order contracts, the respondent's proposed plan is dependent on the scope and nature of the jobs required under the overall contract and is acknowledged as projected utilization based on trade areas engaged.

(a) The EOO Director may determine that the bid is non-responsive where the bidder: (1) failed to provide a completed M/WBE plan; (2) failed to identify MBEs or WBEs by name, the scope of work and value of work as a percent of the total bid sufficient to meet the applicable M/WBE goals for that project; (3) failed to achieve the dollar value and/or percentage of credible participation by certified MBE/WBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the M/WBEs goals.

- (b) The EOO Director's determination shall be in writing and state the bases for such decision.
- (c) The EOO Director's determination shall be final and shall not be subject to the remedy provisions of article IX.
- (d) Job order contracts shall contain provisions specific to on-call requirements.

Sec. 28-150(8). Good faith effort waiver. If the M/WBE plan does not meet the project goals, the contractor/bidder may seek a waiver. The application for a waiver shall be in writing and must be fully completed and submitted in accordance with section 28-150(7). Specific requirements for waiver requests for job order contracts will be included in the MWBE amendment for job order contracts. The waiver request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and a MBE and WBE plan must also be submitted. When a full waiver is sought, a MBE and WBE plan does not need to be submitted. The bidder must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the bidder's good faith efforts to meet the goals. Evidence of the bidder's good faith efforts may include, but are not limited to, documentation of at least four (4) of the following:

- (a) Attendance at pre-bid meetings or pre-solicitation meetings that were scheduled by the City to inform M/WBE of prime and subcontracting opportunities.
- (b) Copies of written notification to MBEs and WBEs that interest/bids in the subcontract was being solicited.
- (c) Documentation of communication with EOO seeking technical/professional assistance identifying available M/WBEs.
- (d) Documentation of efforts made to select portions of work for M/WBE subcontracting in order to increase the likelihood of meeting the M/WBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate M/WBE participation.
- (e) Documentation of efforts to assist and negotiate with M/WBEs for specific sub-bids and reasons for rejection of any such offered, including the names, addresses, and telephone numbers of M/WBEs who were contacted and reason for the rejection.

(f) Evidence that the contractor provided M/WBEs with adequate information plans, specifications, and requirements of the contract.

(g) As to each MBE and WBE contacted which the bidder considered not to be qualified, a written statement of the reasons for the bidder's conclusion.

(h) Written quotes or records of verbal quotes solicited from all MBEs or WBEs seeking subcontract work with prime contractors at the time of the bidding.

(i) Documentation of request of the most current EOO directory of certified MWBE/DBE firms from EOO.

Sec. 28-150(9). Waiver denial. If the apparent low bidder is denied a waiver and deemed non-responsive, the EOO Director shall recommend that the Procurement Director reject the bid. The EOO Director's denial of the waiver and the Procurement Director's, subsequent, rejection of the bid shall be final and shall not be subject to the remedy provisions of Article IX.

Sec. 28-150(10). General waiver or reduction of MBE/WBE project goals. If after consultation with certified MBE and WBE firms and/or appropriate City departments, the EOO Director determines that MBE or WBE availability is less than projected, the EOO Director may waive or reduce established project goals. In such circumstances, the EOO Director shall certify that MBEs or WBEs are not in fact available.

(a) The City shall waive a project goal, at least in part, if the quotes or proposals received by the bidder requesting a waiver from all MBEs and WBEs in one trade exceed the quote or proposal of the lowest non-MBE/WBE competing for the same work by the lesser of ten (10%) percent or two hundred fifty thousand dollars (\$250,000.00). In such circumstances, the EOO Director shall certify that MBEs or WBEs are not in fact available to provide the needed labor and materials at competitive prices.

(b) The procedure to be followed for waivers on job order contracts shall be as defined in the MWBE Amendment for Job Order Contracts.

Sec. 28-150(11). Review for unnecessarily restrictive specification, scope, and terms of construction contracts. The Equal Opportunity Office will be responsible for the ongoing review of bid specifications and the scope and terms of construction contracts to ensure they are not unnecessarily restrictive and do not serve as a participation barrier for M/WBEs. A "Bid Specification Review" process shall be developed and coordinated by the

coordinated by the EOO to monitor compliance through periodic checks and audits of contracts under fifty thousand dollars (\$50,000.00) and to review all construction bid solicitations in excess of fifty thousand dollars (\$50,000.00).

Sec. 28-151. General procurement of goods, materials, and services, with the exception of professional services and construction services.

Sec. 28-151(1). Price preference. The EOO Director may apply up to seven (7) percent competitive price preference to bids or proposals received from certified MBEs and WBEs that are eligible to receive such preference based on disparity (to include re-emerging significant underutilization). Such firms must provide City M/WBE certification verification with their bid or proposal. The price preference shall apply to eligible contracts estimated between the formal solicitation threshold, and two hundred fifty thousand dollars (\$250,000.00). The bid preference will be implemented by the department of procurement.

(a) *Price preference percentage to meet yearly MBE/WBE goals.* Unless otherwise indicated in this article, all eligible contracts estimated to exceed the formal solicitation threshold, but estimated under two hundred fifty thousand dollars (\$250,000) shall be subject to bid preference. Bid preference percentages shall only be available to those MBE/WBEs where it is determined that there is significant underutilization. Bid preference shall be eliminated when there is no longer a showing of disparity. If significant disparity reemerges, bid preference shall be reestablished.

The EOO shall establish yearly race and/or gender conscious goals and shall utilize goal setting techniques within general procurement based on, but not be limited to, the following:

- (1) The present availability of certified MBES and WBES that are willing and able to provide goods, materials and services/labor in the industry classifications within general procurement.
- (2) The ability of qualified M/WBE firms to readily expand their capacity to meet additional demand.
- (3) A forecast of eligible contracts to be awarded within the fiscal year. The level of participation by such firms in past contracts awarded by the City.

(b) In determining the lowest responsive and responsible bid or price proposal on all eligible contracts, the bid or price proposal submitted by a certified MBE/WBE shall be adjusted by reducing

the bid or proposal price(s) of such business by up to seven (7) percent for contracts between the formal solicitation threshold amount and one hundred fifty thousand dollars (\$150,000) and five (5) percent for contracts exceeding one hundred fifty thousand dollars (\$150,000) and ranging up to two hundred fifty thousand dollars (\$250,000). This adjustment shall be solely for the purpose of establishing the lowest price. The actual value of the contract awarded shall be the amount of the actual bid or proposal submitted, unless otherwise negotiated, by the MBE/WBE.

(c) *Price Preference for joint ventures.* A joint venture shall receive Price Preference for an eligible contract when MBE or WBE participation equals or exceeds thirty-five (35) percent of the joint venture. The percentage of Price Preference shall be up to seven (7) percent for contracts between the formal solicitation threshold and one hundred fifty thousand dollars (\$150,000), and five (5) percent for contracts exceeding one hundred fifty thousand dollars (\$150,000) and ranging up to two hundred fifty thousand dollars (\$250,000). The MBE or WBE partner must be responsible for a clearly defined portion of the work to be performed, and share in the ownership control, management responsibilities, risks and profits of the joint venture. The portion of the MBE or WBE joint venture partner's work shall be set forth in detail separately from the work to be performed by the non-MBE or non-WBE joint venture partner. The certified MBE or WBE joint venture partner's portion of the contract must be assigned a commercially reasonable dollar value. The bidder or offeror shall provide the City access to review all records pertaining to joint venture agreements before and after the award of a contract, to the extent reasonably necessary to assess compliance with this article. Only the portion of work, supplies and/or services attributed to the MBE and/ or WBE, as a member of the joint venture, may satisfy or be counted towards relevant MBE/WBE participation goals.

Sec. 28-151(2). Review bid specification. The Equal Opportunity Office will be responsible for a periodic review of solicitation specifications within general procurement for goods, materials and services contracts that exceed two hundred and fifty thousand dollars (\$250,000.00) to ensure specifications are not unnecessarily restrictive and do not serve as a participation barrier for M/WBE and small disadvantaged firms. A random sample of contracts shall be reviewed quarterly and results documented.

Sec. 28-151(3). Reducing size, scope, or terms of certain contracts. The EOO shall evaluate large purchases of certain commodities and services for purchase through smaller, shorter-term contracts that are more accessible to and enhance participation of local M/WBEs and small

businesses. Such evaluation will include but shall not be limited to the following factors:

- (a) The feasibility of annual contracts where several small contracts could be administered.
- (b) A review of multi-item package purchase contracts for breakdown into smaller line-item contracts.
- (c) A review of all contracts estimated to exceed two hundred and fifty thousand dollars (\$250,000.00) for possible reduction in size, scope, or terms of the contracts to enhance M/WBE participation.
- (d) The administrative cost of the contract.

Sec. 28-151(4). Small purchases over two thousand five hundred dollars (\$2,500.00). For purchases of goods and services between two thousand five hundred dollars (\$2,500.00) and the formal solicitation threshold, within the department of procurement, the procurement officer shall solicit, if available, at least one M/WBE contractor or vendor utilizing the City's most recently published M/WBE/DBE directory to quote or bid on that commodity or service purchase.

Sec. 28-151(5). Professional services MBE/WBE participation goals and the application of preference points. In an effort to remedy the present effects of identified disparity in contracting of professional services, the EOO shall implement annual MBE/WBE participation goals specifically addressing the City's underutilization of certain groups in professional services.

The City shall utilize goals or targets as follows:

- (a) The EOO will establish yearly race and/or gender conscious goals and shall utilize goal setting techniques within professional services targeting professional services, based on but not be limited to, the following:
 - (1) The present availability of certified architects and engineers (A & E) MBES and WBES that are ready, willing and able to provide services/labor in the industry classifications within professional services.
 - (2) The ability of qualified A & E M/WBE firms to readily expand their capacity to meet additional demand.
 - (3) A forecast of eligible contracts to be awarded within the fiscal year. The level of participation by such firms in past contracts awarded by the City.

(4) Whether disparity exists or re-emerges for the group within this procurement category.

(b) Five (5) Preference points shall be applied by the department of procurement only to certified firms which fall within the race/gender category for which there is statistical disparity.

The department of procurement within the procurement area of professional services, shall integrate this preference into the current administrative directive (3.06-2) which provides for preference points for “local firm classification” and for “least previous work.”

(1) The preference points shall be applied by the department of procurement to the selection committee scores during the screening phase of the selection process.

(2) In no case shall a single firm be awarded more than a total of ten (10) points and in cases where a single firm is eligible for preference points as a certified MWBE (within a group for which disparity is indicated), local firm classification and least previous work preference points, the procurement department shall forfeit any points beyond ten (10) points. The procurement department shall maintain records which reflect information on the contracts and MWBE firms that have received preference points and the name of the firm or firms that were awarded the contract.

(3) As significant disparity is eliminated in these categories, the utilization of race/gender-neutral means in attaining the established goals for this area shall be increased. In all instances where race/gender-neutral means are utilized, if significant disparity re-emerges, race/gender-conscious techniques shall be utilized on a non-permanent basis to correct identified disparities.

Sec. 28-151(6). Non-Interference. The process of determining and appealing eligibility, certification, continuing certification or decertification of the MBE or WBE status of enterprises shall not be subject to interference, influence, or coercion of any sort by parties including departmental and elected officials.

ARTICLE XV. LIVING WAGE

Sec. 28-152 Conditions for Use.

Employees of City contractors providing specified services to the City shall be paid a living wage by said contractors for the hours expended providing

services to the City, and shall also be offered health insurance or compensated as provided under section 28-157(c).

Sec. 28-153 Eligible Contract.

An eligible contract shall be any contract awarded by the City pursuant to section 28-17 or section 28-18 and shall be limited to the furnishing of the following services to the City:

- (a) facility and building maintenance
- (b) refuse collection and recycling
- (c) temporary employee services
- (d) janitorial and custodial
- (e) landscape maintenance and weed control
- (f) pest control
- (g) security and crowd management services
- (h) moving services

Sec. 28-154. Ineligible Contracts.

An ineligible contract shall include:

- (a) Contracts under which federal or state regulations preclude the applicability of a living wage;
- (b) Contracts which involve programs where the City shares management authority with other jurisdictions, and intergovernmental and cooperative agreements;
- (c) Contracts that are impacted by bond covenants, grant restrictions, governmental regulations;
- (d) Contracts which involve programs that do not primarily provide direct services to the City but have a franchise or contract to provide services to the residents or property owners of the City;
- (e) Job training and youth or summer employment programs;
- (f) Contracts that would otherwise be eligible, in which all eligible employees are compensated at or above the living wage rates required;
- (g) Contracts awarded to Contractors with no employees

Sec. 28-155 Eligible Employee.

Any person employed by a contractor holding an eligible contract with the City who:

- (a) Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- (b) Expends chargeable time providing services to the City and on City property;
- (c) Is at least sixteen (16) years of age.

Sec. 28-156 (Reserved)

Sec. 28-157 Wages.

- (a) If health insurance benefits are offered, a wage of no less than eight dollars (\$8.00) per hour.
- (b) If health benefits are offered, an eligible contractor shall pay no less than 50% of the eligible employee's health benefits premium.
- (c) If health insurance benefits are not offered, a wage of no less than nine dollars (\$9.00) per hour.
- (d) The wage rates shall automatically be adjusted each year based upon the cost of labor adjustment provided to permanent City employees. The adjusted wage rates shall be effective for the calendar year commencing January 1 after the effective date for City employees. Existing contracts shall be adjusted each year upon the contract renewal date.
- (e) If the contract is subject to a prevailing wage requirement or union agreement, the higher wage shall apply.
- (f) If health benefits are offered to an eligible employee under an eligible contract, proof of said benefits shall be provided at the time of bid or proposal submission or, as the City may require, in accordance with notification by the City of its intent to award a contract.

Sec. 28-158 Compliance.

The City's Director of Procurement shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this article. In the event of any violation of the provisions set forth in this Article, the contractor and any subcontractor

responsible therefor shall be liable for the unpaid wages and shall pay the eligible employee any amounts underpaid. The City's Director of Procurement is additionally authorized to take any one or more of the following remedies in the event of a written determination of noncompliance:

- (a) Liquidated damages paid to the City in the amount of \$50.00 for each incidence of noncompliance for each day of non-compliance and/or each day it continues;
- (b) Suspension of further payments on the contract until the violation has ceased;
- (c) Suspend and/or terminate the contract for cause; and/or
- (d) Debar or suspend the contractor or subcontractor from future City contracts pursuant to Article IX.

Protests or appeals of the Director's remedies for noncompliance shall be in accordance with Article IX.

Sec 28-159 Records.

(a) The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the City's Director of Procurement, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available, the Director may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to Article IX.

(b) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period for three years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

